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| In the Matter of the Arbitration Between:<br><br>UNITED PUBLIC WORKS, AFSCME, LOCAL, 646, AFL-CIO;<br><br>Union,<br><br>VS.<br><br>STATE OF HAWAII, DEPARTMENT OF HEALTH, .....;<br><br>Employer. | ) | RE: Individual Grievance of ..... (Section 11, Unit 1, .....)<br><br>UNION AND GRIEVANT'S POST ARBITRATION HEARING BRIEF; EXHIBITS 1 and 2; CERTIFICATE OF SERVICE<br><br>DUE DATE; September 30, 1998 |

## ARBITRATION DECISION AND AWARD

..... was employed by the State of Hawaii, Department of Health ("Employer") as a janitor at the ..... ..... employment was terminated by Employer on ..... for "making threats against coworkers, name calling, and using profanity at ....." The United Public Workers AFSCME, Local 646, AFL-CIO ("Union") filed this grievance on behalf of ..... alleging that ..... termination violated the Unit I Collective Bargaining Agreement.

The parties have agreed that the matter is arbitrable and that the issues are:

A. Was the Grievant dismissed for just and proper cause?

B. If not, what is the remedy.

An arbitration hearing was held on June 3-6, 1998 at the ..... ..... was aware of the grievance proceeding and notified of the hearing but did not attend.

JUST AND PROPER CAUSE

The Employer and the Union agree that the criteria for determining whether just cause was present are the seven tests of just cause listed in Enterprise Wire Company, 46 LA 359 (Daugherty 1966).

1. Did the Employer give the Employee any forewarning of the possible disciplinary consequences of the Employer's conduct?

Prior to the incident which resulted in termination, the Employer delivered a letter dated September 19, 1997 to ..... The letter stated that threatening other people who worked at ....., name calling and offensive language would not be tolerated and further incidents would result in immediate dismissal. The Employer and the Union agree that the answer to this question is yes.

2. Were the Employer's rules reasonably related to the orderly, efficient and safe operation of the facility and the performance that the Employer might properly expect of the employee?

The Employer submits that the purpose of the ..... is to provide a safe and secure place for patients and staff and that threats by Grievant accompanied by yelling and use of profanity made other employees feel afraid and were disruptive. The Union submits that there were no specific facts introduced into evidence that support a conclusion that the prohibitive conduct would affect the orderly, efficient and safe operation of .....

The testimony of employees who were present and aware of ..... conduct and reasonable inferences from that testimony

support a conclusion that the rule prohibiting threatening conduct was reasonably related to the orderly, efficient and safe operation of the facility.

3. Did the Employer, before administering discipline to the employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of the Employer?

The Employer and Union agree that the answer to this question is yes.

4. Was the Employer's investigation conducted fairly and objectively?

The Union argues that the answer to this question should be no because the statements by other employees at the ..... which were included in the investigation were requested by a supervisor. The fact that a supervisor requested that reports be prepared as part of an investigation does not necessarily invalidate those statements or indicate that the investigation was not conducted fairly or objectively. The witnesses who supplied these reports testified at the arbitration hearing or were available to testify. The testimony during the arbitration hearing did not indicate that any of the statements that were requested as part of the pre-termination investigation were inaccurate or the result of any undue influence by any supervisor.

5. Did the Employer obtain substantial evidence or proof that the employee was guilty as charged?

The Union submits that the conduct which occurred on November 14, 1997 which resulted in ..... termination was not the specific prohibited conduct identified in the letter of September 19, 1997

which refers to the incident of September 15 and 16, 1997. The Union is correct that there were some differences between the threatening behavior engaged in by ..... in September and the behavior engaged in by ..... in November. However, both incidences involved threats directed at another employee while at the work place. The requirement that there be substantial evidence that he was guilty as charged does not require evidence that the conduct in November was identical to the conduct in September.

6. Has the Employer applied its rules, orders and penalties evenhandedly and without discrimination to all employees?

The Employer's witnesses testified that this was the only instance involving threatening behavior that they were aware of. There was testimony regarding another instance involving the use of profane language, but that was handled in a manner that was not inconsistent with the handling of this case. There was no evidence that the rule was applied inconsistently with respect to ..... or any other employee.

7. Was the degree of discipline administered by the Employer in this case reasonably related to (a) the seriousness of the Employee's proven offense and (b) the record of the Employee in his service with the Employer?

In this case, the Employer presented testimony from the employee who was threatened and from employees who overheard the threats made by ..... on November 14, 1997 as well as evidence regarding prior threats by ..... in September 1997. The evidence supports the Employer's position that the threats against .....

coworker were serious and warranted the sanction of dismissal. ..... did not appear to testify and the Union was not able to present convincing evidence that the threats were not intended as threats or that they were not serious.

REMEDY

In view of the foregoing, no remedy is required.

AWARD

The grievance is denied.

DATED: Honolulu, Hawaii; October 30, 1998.

PAUL S. AOKI
Arbitrator